
(1946) 04 BOM CK 0007

In the Bombay High Court

Case No : Income-tax Reference No. 2 of 1944

Hanmantram Ramnath

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 02-04-1946

Acts Referred:

Income Tax Act, 1961 — Section 10, 66(1)
Trusts Act, 1882 — Section 5

Citation : AIR 1947 Bom 115 : (1946) 48 BOMLR 532

Hon'ble Judges : Leonard Stone, J;Kania, J

Bench : Division Bench

Judgement

Kania, J.—This is a reference u/s 66(1) of the Indian Income Tax Act made by the Income Tax Appellate Tribunal, Having regard to the way in which, the matter of the assessment of the assessee had progressed, considerable confusion had been created, but on the further statement of facts sent by the Tribunal the relevant and material facts are now fairly clear.

2. The assessee is Rao Bahadur Hanmantram Ramnath of Poona. He is assessed with the status of a joint Hindu family. We are concerned in the present reference with the assessment for the accounting year Samvat 1995 (October 24, 1938, to November 11, 1939). The assessment proceedings were taken in 1940-1941. The assessee, the joint Hindu family, was assessed by the Income Tax Officer on an income of Rs. 86,256 on July 10, 1942. A perusal of the assessment order shows that the assessee claimed that he should be allowed to deduct a sum of Rs. 9,750, being interest which he was liable to pay to "the R. B. Hanmantram Tarachand Charitable Trust Account". In his assessment order the Income Tax Officer has considered the claim as put forth by the assessee. The claim was that the amount being deposited with the joint family firm, interest had become payable on this charitable trust account and therefore the assessee firm should be allowed to deduct the amount as a permissible deduction u/s 10 of the Indian Income Tax Act. The Income Tax Officer rejected this contention because in his opinion no valid trust was created. On appeal to the Appellate Assistant

Commissioner, this view was upheld. The matter was then taken by the assessee to the Income Tax Appellate Tribunal. From the record now before this Court, it appears that on behalf of the assessee four affidavits had been filed before the Income Tax Officer in the previous year. No copies of those affidavits were produced before the Income Tax Officer dealing with the assessment under review. The books of account showing how the entries were made and dealt with were perhaps shown to the Income Tax Officer but no extracts were filed up to the time the matter was brought before the Tribunal. The Tribunal therefore dealt with the matter on the meagre materials which were then before it. It decided the question against the assessee. They held that Rao Bahadur Hanmantram did make a declaration creating a trust on November 4, 1937, and on October 23, 1938, an entry crediting the sum of Rs. 2,00,000 to the trust account was made in the assessee's books, but there was nothing to show that there was an actual transfer of assets, which was necessary u/s 6 of the Indian Trusts Act, to constitute a valid trust. They also found that the income as a fact was devoted to charitable and religious purposes. Their conclusion was that the fund which produced the income was not held in trust, on the materials put before them. When the matter came before us, we found that several statements made in the course of that judgment were either not decisions of fact or did not indicate the conclusions as findings of fact. We, therefore, referred back the matter to the Tribunal under s. 66(4) of the Indian Income Tax Act. They have now submitted a full detailed statement containing all the facts and documents which, were averred and placed before them. They have submitted for the Court's opinion the question in the following terms:

Whether, in the circumstances of the case the sum of Rs. 9,750 is income derived from property held under trust or other legal obligation wholly for religious or charitable purposes within the meaning of Section 4(3) (i) of the Income Tax Act?

3. At the outset it must be pointed out that the question suggested is not the correct question, to be answered by the Court. The question submitted can arise, if the trustees who had received this income made a claim that the same was exempted under Section 4(3) (i) of the Indian Income Tax Act. The facts disclose that the assessee is not a trustee. The assessee has not received this income from the trust funds and has not claimed an exemption u/s 4(3) (i) of the Act. As shown by the assessment order passed by the Income Tax Officer, the assessee's claim was for an allowance u/s 10 of the Indian Income Tax Act. This defect, however, can be easily put right. The parties appearing before us have conceded that it would be proper for the Court to raise the following question on the facts put before us. The question to be answered will be as follows:-

Whether the assessee is entitled to claim a reduction of Rs. 9,750 from his income, under the circumstances of the case, u/s 10 of the Income Tax Act to decide this question the Court will have to decide whether this amount was payable by way of interest to a creditor of the assessee. That would give rise to the question, who was the creditor ? To answer that question the Court must

determine whether there was a valid trust created by Rao Bahadur Hanmantram, because, unless such trust was created, the trustees could not be creditors of the assessee and unless they were creditors, the claim could not be allowed. The question, therefore, reverts back to the discussion contained in the statement of case, viz. whether a valid trust was created by Rao Bahadur Hanmantram?

4. Although the Indian Trusts Act does not apply to charitable trusts, it is clear that the three certainties there described are required to create a charitable trust. They are: (1) a declaration of trust which is binding on the settlor; (2) setting apart definite property and the settlor depriving himself of the ownership thereof; and (3) a statement of the objects for which the property is thereafter to be held, i.e. the beneficiaries. In the present case there is no dispute about the third. As regards the first also there does not appear to be a serious dispute. The affidavits (copies) were filed in these proceedings an-5 in the course of its judgment the Tribunal has not stated that it disbelieves the evidence of the deponents. We must therefore proceed on the footing that on November 4, 1937, a declaration of trust as mentioned in the affidavit of Rao Bahadur Hanmantram was made. The following is a material extract from its translation:-?

... During my illness it was my desire that I should by my own hand give some permanent help to the cause of Religion and Education. Hence I resolved to set apart Rs. Two lakhs of my self-acquired estate for the aforesaid religious and charitable purposes and create a trust of it. In accordance therewith, I emphatically declared that Rs. Two lakhs out of my estate were in respect of charity, with the consent of the members of my family and in the presence of my circle of friends on the good and auspicious day of the 1st of Kartik Shuddha of Samvat 1994 (November 4, 1937) and I directed that the aforesaid sum should be kept credited to the Rao Bahadur Hanmantiam Ramnuth (account). I definitely settled that the interest to be realised from the above amount in respect of the charity should be spent for the use of the Dharainshala, Hospital, Anna Chhatra, Education and Hindu orphan persons at Vrindavan and Balaji and for the purpose of carrying on the administration of the said trust accordingly I appointed myself, Hiralal Ramsukh and Shriniwas Hanmantram as Trustees for the time being...

5. In addition to the affidavit of Rao Bahadur Hanmantram, affidavits of Shrinivas Hanmantram and Hiralal Ranmath confirming what was stated in the affidavit of Rao Bahadur Hanmantram were also filed. In all these three affidavits it was further stated as follows:-

As it was unanimously agreed by us all trustees that the said Rs. 2,00,000 should for the present be deposited at interest at the Pedhi of Tarachand Ranmath, the said moneys have been kept at interest at the aforesaid Pedhi.

6. It is not necessary for us to decide whether the declaration as made was a sufficient and proper declaration, because the question to be considered can be

disposed of on the determination of the second point, viz. whether the property is clearly specified and whether the settlor divested himself of beneficial interest in the same.

7. It appears from the statement of case that on October 23, 1938, certain entries were made in the books of the joint family firm. Before that date, there was in the assessee's ledger an "Anna Chhatra account" in Samvat 1994. Rs. 11,639 stood to the credit of that account. There was another account described as the hospital account. In that account Rs. 43,150 stood to its credit. The firm had also a profit and loss account. A sum of Rs. 3,13,607 stood to the credit of that account. On the last day of Samvat 1994 a sum of Rs. 41,000 was debited in the hospital account, a sum of Rs. 11,000 was debited in the Anna Chhatra account and a sum of Rs. 1,48,000 was debited in the profit and loss account. The total of these three, viz. Rs. 2,00,000, was credited in the charitable trust account. At the end of the year interest at the rate of four and a half per cent, was credited and certain amounts were spent on charitable objects. As I have already mentioned before, the Tribunal has noted that the fact of the amounts being spent on charitable objects is not disputed. The question for consideration is whether on these facts the second certainty required to create a trust is found in the transaction.

8. The Tribunal has found that this certainty is not proved and therefore, there was no charitable trust. In our opinion that conclusion is correct. It is not disputed that till the transfer of Rs. 41,000 and Rs. 11,000 from the two accounts, those accounts did not constitute trust accounts. They were only accounts in the books of the assessee. The assessee was entitled to deal with the amounts standing to the credit of those accounts as he thought right, without being liable to account to anyone. By making these three transfer entries, was any property so separated as to prevent the assessee from claiming any beneficial interest therein thereafter? In our opinion the answer to that is in the negative." These are only book entries. It is not shown that on the day the entries were made, a sum of Rs. 2,00,000 was available to the assessee in his safe or in any banking account. We are not concerned with the question whether the firm had credit of Rs. 2,00,000 or had moveable property worth Rs. 2,00,000. The question is whether Rs. 2,00,000 in cash were ready as cash of the firm on that day. It was argued that when the settlor and the trustees agreed that the sum in respect of which the settlor created a trust was not necessary to be retained by the trustees but was to be deposited with the assessee's firm at interest, it was not necessary in law for the settlor physically to hand over Rs. 2,00,000 to the trustees and for the trustees to hand back the amount to the assessee in the capacity of a debtor. It is not necessary to consider this argument in the present case, because the initial step of Rs. 2,00,000 being available to the settlor in cash is not established. In the absence of this fact being proved, the entries must be considered only as book entries. The question which arises for determination is whether in the absence of proof of cash being ready, the making of entries in the account books constitutes a separation by the

settlor of the trust property from his other property, and discloses that he had deprived himself of the beneficial interest therein, as required by law. In our opinion, the entries mentioned to us do not lead to that conclusion.

9. On behalf of the Commissioner our attention was drawn to *Chamihers v. Ghambers* [1944] Mad. 617. In that case Mr. Chambers caused entries to be made in the books of his business, the Chrome Leather Company, crediting Mrs. Chambers, Ids children by her, and certain other relatives with various sums of money and debiting his capital account in the company's books with those sums. Separate accounts were opened in, the respective names showing the sums so credited. In particular in the case of Mrs. Chambers a separate account was opened in the company's, books showing ultimately Rs. 2,00,000 to her credit. Before that, on July 25, 1919, Mr. Chambers had written a letter to his company stating inter alia as follows:

With, reference to the amounts at present standing to the credit of my wife and children in your books please make such additions thereto as may be required so that as from April 1st last the capital at their credit in the firm is as follows:-

Mrs. Chambers Rs. 2,00,000....

Please note also that as and from the 1st April last these sums at their respective credits are to bear interest at 6 per cent payable half-yearly and when the Chrome Leather Company is converted (either with or without the business of Chambers and Co.) into a Limited Liability Company-Preference shares at 6 per cent with interest payable half-yearly are to be issued for the sums at their credit as stated above.

10. In considering whether this letter, coupled with the entries made as director therein resulted in producing the second certainty required to create a trust, their Lordships of the Privy Council observed as follows (p. 623) :--

The only question argued before their Lordships was whether a trust in favour of Mrs. Chambers had been effectually constituted.... In India the Law of trusts is codified in the Trusts Act {IT Of 1882) and when the provisions of that Act are consulted the appellant's case is found to break down at the very threshold. If there is one thing clear it is that there can be no trust unless its subject matter is clearly ascertainable. Section 8 of the statute declares that "the subject matter of a trust must be property transferable to the beneficiary ". What then was the subject matter of this alleged trust ? Gentle J. seems to have been of opinion that it was a fund of two lakhs of rupees. But that was not so. No such sum was ever set aside and appropriated by Mr. Chambers as a fund transferable to Mrs. Chambers of which he was to be a trustee with all the consequential obligations of such a position.

11. In a later part of the same judgment the Board observed as follows (p. 624) :

There being no ascertained and appropriated trust fund the case for the constitution of a trust necessarily fails.... The requisites for the constitution of a

valid trust are proscribed by Sections 5 and 6 of the Indian Trusts Act.

12. Their Lordships then set out the terms of those sections and after discussing whether there was a declaration of trust by the letter of Mr. Chambers observed as follows (p. 625) :-

Mr. Chambers never indicated with reasonable certainty by any words or acts an intention on his part thereby to create a trust. His acts were throughout inconsistent with any such intention. As to the trust property, it has already been pointed out by their Lordships that there was no such ascertainment and appropriation as the law requires.

13. This decision was on the words of the sections of the Indian Trusts Act, which in terms do not apply to charitable trusts. It is, however, equally clear that the necessity of having ascertained property as the subject matter of the trust is none the less in the case of charitable trusts. We therefore agree with the conclusion of the Tribunal that the property not being ascertained and the settlor not being shown to have divested himself of all beneficial interest therein so as to transfer the ownership to the trustees, there is no valid trust in law. If so, there can be no creditor to whom interest- is payable and the claim for allowance as made by the assessee was rightly rejected. The answer to the question formulated by us under the circumstances will be in the negative.

14. In concluding, we must note that the Tribunal has taken considerable pains in setting out in detail the facts as were brought to their notice in this reference. In sending back the reference we had no desire to criticise the manner in which they had held the inquiry in the first instance. We had pointed out that in order to arrive at the conclusion indicated in their judgment it was necessary to set out the facts, as mentioned in our referring judgment. We are glad to note that the Tribunal has followed the lines indicated by us and thus brought to a satisfactory conclusion the somewhat complicated question discussed before them- The assessee will pay the costs of this hearing and also of the first hearing.